

2000 MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made and entered into by the following Federal and State agencies:

Federal

U.S. Army Corps of Engineers
U.S. Bureau of Reclamation
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
U.S. Geological Survey
National Marine Fisheries Service

State

California Department of Fish and Game
California Department of Water Resources
California State Water Resources Control Board

These agencies are hereinafter referred to collectively as the "Parties" or "IEP Agencies".

BACKGROUND: There is now in effect a 1970 MOU creating the Interagency Ecological Study Program (IEP MOU). The IEP MOU was amended in 1985, 1990 and 1992. Under the terms of the 1990 amendment, the IEP MOU will expire on September 30, 2000. An additional amendment to the IEP MOU is required to address IEP activities that may take species of fish, plants or wildlife that are listed as endangered, threatened or candidate species pursuant to the California Endangered Species Act, California Fish and Game Code section 2050, et seq. (CESA). An additional amendment is also required to extend the duration of the IEP MOU.

OBJECTIVE: The objective of this MOU is to amend the IEP MOU to extend the existing MOU until September 2010 and to establish that IEP activities that may take CESA listed species shall be carried out by, or under the approval and supervision of the California Department of Fish and Game (CDFG); to establish the process by which such activities will be identified and approved; and to extend the duration of the IEP MOU.

STATEMENT

OF AGREEMENT: 1. All IEP activities that may result in the take of CESA listed species shall be subject to the approval and supervision of CDFG.

2. All proposed IEP activities shall be evaluated in accordance with the "Interagency Ecological Program Quality Assurance and Quality Control Program for Collection and Evaluation of Environmental Data" (IEP QA/QC Plan) (Attachment 1) including any amendments hereto. The IEP conducts an annual planning process which includes review of all activities and the development of a comprehensive program. Each year, prior to the approval of the IEP Program for the following year, CDFG, in consultation with the Program Manager, shall identify any proposed Program elements that may cause the take of a CESA listed species. CDFG shall determine with regard to each Program Element identified whether the potential scientific benefit to California's fish and wildlife resources warrants the potential take of CESA listed species; whether the take will be adequately minimized or mitigated; and whether there is any potential to jeopardize the continued existence of a CESA listed species. Based on these criteria, CDFG will approve or disapprove the Program element. If CDFG approves the Program element, it shall identify such terms and conditions as it deems necessary or appropriate to minimize or mitigate the take of CESA listed species, and shall supervise the Program element's implementation. CDFG may suspend or terminate implementation any such Program Element, if in CDFG's judgement, suspension or termination is necessary to prevent undue harm to any listed species. In implementing IEP Program activities pursuant to this MOU, employees of the IEP Agencies shall act under the supervision of CDFG and shall therefore, for this limited purpose, act as agents of CDFG pursuant to title 14, California Code of Regulations, section 783.1(c).
3. IEP activities initiated before the effective date of this MOU that cause the take of a CESA listed species shall cease, unless the take is authorized pursuant to an existing federal Endangered Species Act incidental take permit or biological opinion and a CESA memorandum of understanding, incidental take permit, or consistency determination pursuant to Fish and Game Code section 2080.1. Any such unauthorized take shall be reported immediately, by telephone and subsequent written notice, to the IEP Program Manager. The principal investigator for the activity causing the take and the Program Manager shall consult with CDFG and shall incorporate any terms and conditions regarding the activity required by CDFG before proceeding. However, since Federal agencies cannot waive Federal sovereign immunity, they agree to this provision in the spirit of cooperation in furtherance of the mission of the IEP and to the extent permitted by Federal law.

PARTICIPATION:	Participation is limited to the maximum extent permitted under Federal and State law.
AVAILABILITY OF FUNDS:	Work to be performed under this MOU is subject to the availability of funds through the Federal and State Governments' normal budget process.
DURATION OF AGREEMENT:	This MOU will become effective when signed by each of the parties to this MOU. The IEP MOU, as amended by this MOU and the 1985, 1990 and 1992 amendments, shall remain in effect until September 30, 2010, or until terminated as provided herein. The duration of the IEP MOU, as amended, may be extended beyond September 30, 2010, by mutual consent of the parties.
CONTRACTUAL REQUIREMENTS:	Statement-of-work, products, agency obligations, delivery dates, funding, expense statements, billing procedures, and payment provisions will be arranged between the agency(s) transferring funds and the agency(s) conducting the work on a case-by-case basis.
RELEVANT LEGISLATION:	<ul style="list-style-type: none"> - National Environmental Policy Act (NEPA), 1969. - California Environmental Quality Act (CEQA), 1970. - Public Law 92-500 (Federal Water Pollution Control Act Amendments of 1972). - State of California Appellate Court Decision - <u>United States of America v. State Water Resources Control Board</u>, (1986) (Racanelli Decision). - Law enforcement on Reclamation projects in conjunction with local enforcement agencies, under Public Law 98-552, Water Enforcement (42 U.S.C. 1962, et seq.) - Fish hatcheries and wildlife enhancement facilities under Public Law 89-72, Federal Water Project Recreation Act (16 U.S.C. 460 1-5, 16 U.S.C. 460 1-12, et seq.). - Investigation of cultural resources, including wildlife mitigation under the Fish and Wildlife Coordination Act of 1934 as amended, including Public Law 93-291 which amends Public Law 86-523 (16 U.S.C. 469). - Science research under Public Law 93-291 which amends Public Law 86-523 (16 U.S.C. 469). - Science research under Public Law 85-934 (42 U.S.C. 1891-2).
TERMINATION:	The MOU or contractual agreements developed as part of the MOU may be terminated in whole, or in part, when any agency determines that

continuation would not produce beneficial results commensurate with further expenditure of funds. The parties will agree upon the conditions of termination, including the effective date, and in the case of partial terminations, the portion to be terminated. The agency(s) will not incur new obligations for the terminated portion after the receipt of the

termination notice, and will cancel as many outstanding obligations as possible after receipt of the termination notice. Each agency will allow full credit to the other agency(s) for its share of noncancellable obligations properly incurred by the other agency prior to receipt of the termination notice.

WITHDRAWAL: Any agency may withdraw from the MOU or contracts upon sixty (60) calendar days' advance written notice of such terminations. Written notices are to be sent to the Agency Coordinators. Any agency(s) contracting with the withdrawing agency will be reimbursed for its commitment extending beyond the effective date of termination to a date not later than the date upon which the contract would have expired if not terminated under this paragraph, which the agency(s) doing the work, in the exercise of due diligence, is unable to cancel. Payment of performance under the contract(s) will not exceed the obligation ceiling amounts identified in the contract(s).

AMENDMENTS: No changes may be made to this MOU or contracts unless agreed to in writing by all the parties. Changes dealing with wholly administrative matters (such as changes in paying office, changes of address) may be by written notice of all parties. No oral statement of any person shall be allowed in any manner or degree to modify or otherwise affect the provisions of the MOU and contracts.

RESOLUTION

DISAGREEMENT: If interpretation of one or more aspects of the MOU or contracts should become the source of unresolved disagreement between any of the parties to the MOU, those parties, by mutual arrangement, shall make equitable provision for, and abide by the determinations of, a disinterested third party qualified to perform the resolution services necessary. Any resolution must be agreed to in writing by all the parties to this MOU.

Except as hereby amended, the IEP MOU and all amendments and exhibits thereto shall remain in full force and effect.

EFFECTIVE DATE: This MOU shall become effective upon execution by all parties.

SIGNATURE PAGE

The undersigned certifies that he/she has received a copy of the IEP 2000 Memorandum of Understanding and agrees to the terms and conditions therein.

DATE: 22 Feb 00

U. S. ARMY CORPS OF ENGINEERS

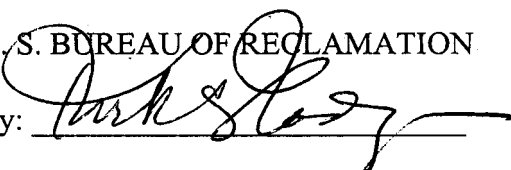
By: Pete T. Proctor
BG, USA

SIGNATURE PAGE

The undersigned certifies that he/she has received a copy of the IEP 2000 Memorandum of Understanding and agrees to the terms and conditions therein.

DATE: 2/14/02

U. S. BUREAU OF RECLAMATION


By: 

SIGNATURE PAGE

The undersigned certifies that he/she has received a copy of the IEP 2000 Memorandum of Understanding and agrees to the terms and conditions therein.

DATE: 2/4/00

U. S. ENVIRONMENTAL PROTECTION AGENCY

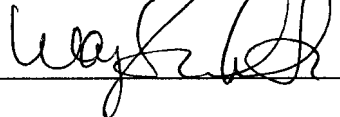
By: 

SIGNATURE PAGE

The undersigned certifies that he/she has received a copy of the IEP 2000 Memorandum of Understanding and agrees to the terms and conditions therein.

DATE: 2/4/00

U. S. FISH AND WILDLIFE SERVICE

By: 

SIGNATURE PAGE

The undersigned certifies that he/she has received a copy of the IEP 2000 Memorandum of Understanding and agrees to the terms and conditions therein.

DATE: Feb 8, 2000

U. S. GEOLOGICAL SURVEY

By: Michael V Shults

SIGNATURE PAGE

The undersigned certifies that he/she has received a copy of the IEP Memorandum of Understanding and agrees to the terms and conditions therein.

DATE: Oct. 3, 2000

NATIONAL MARINE FISHERIES SERVICE

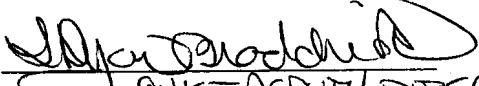
By: Rodney R McAnis

SIGNATURE PAGE

The undersigned certifies that he/she has received a copy of the IEP 2000 Memorandum of Understanding and agrees to the terms and conditions therein.

DATE: 02/03/00

CA DEPARTMENT OF FISH AND GAME

By: 
CHIEF DEPUTY DIRECTOR

SIGNATURE PAGE

The undersigned certifies that he/she has received a copy of the IEP 2000 Memorandum of Understanding and agrees to the terms and conditions therein.

DATE: 2-14-2000

CA DEPARTMENT OF WATER RESOURCES

By: 

SIGNATURE PAGE

The undersigned certifies that he/she has received a copy of the IEP 2000 Memorandum of Understanding and agrees to the terms and conditions therein.

DATE: 11 Feb 00

CA STATE WATER RESOURCES CONTROL BOARD

By: Walt Petri